

AMENDMENT NO.

Calendar No.

Purpose: To improve the bill.

IN THE SENATE OF THE UNITED STATES—110th Cong., 1st Sess.**S. 2248**

To amend the Foreign Intelligence Surveillance Act of 1978,
to modernize and streamline the provisions of that Act,
and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENTS intended to be proposed by

Viz:

1 On page 2, line 5, strike “Targeting the communica-
2 tions of”, and insert “Additional Procedures regarding”

3 On page 3, strike lines 1 through 5 and insert the
4 following:

1 **“TITLE VII—ADDITIONAL PROCE-**
2 **DURES REGARDING CERTAIN**
3 **PERSONS OUTSIDE THE**
4 **UNITED STATES”.**

5 On page 4, beginning on line 20, strike “communica-
6 tions” and insert “communication”.

7 On page 5, strike lines 15 through 17 and insert the
8 following:

9 **“SEC. 703. PROCEDURES FOR TARGETING CERTAIN PER-**
10 **SONS OUTSIDE THE UNITED STATES OTHER**
11 **THAN UNITED STATES PERSONS.”.**

12 On page 6, line 5, insert “located” after “be”.

13 On page 6, line 9, strike “and”.

14 On page 6, between lines 9 and 10, insert the fol-
15 lowing:

16 “(3) may not intentionally target a United
17 States person reasonably believed to be located out-
18 side the United States, except in accordance with
19 sections 704 or 705; and”.

- 1 On page 6, line 10, strike “(3)” and insert “(4)”.
- 2 Beginning on page 6, strike line 13 and all that fol-
3 lows through page 8, line 24.
- 4 On page 9, line 1, strike “(d)” and insert “(c)”.
- 5 On page 9, line 6, strike “(g)” and insert “(f)”.
- 6 On page 9, line 8, strike “(e) and (f)” and insert “(d)
7 and (e)”.
- 8 On page 9, line 9, strike “(e)” and insert “(d)”.
- 9 On page 9, line 19, strike “(i)” and insert “(h)”.
- 10 On page 9, line 20, strike “(f)” and insert “(e)”.
- 11 On page 10, line 5, strike “(i)” and insert “(h)”.
- 12 On page 10, line 6, strike “(g)” and insert “(f)”.
- 13 On page 11, line 12, strike “(i)” and insert “(h)”.

- 1 On page 12, line 8, strike "(i)" and insert "(h)".
- 2 On page 13, line 15, strike "(i)" and insert "(h)".
- 3 On page 13, line 16, strike "(h)" and insert "(g)".
- 4 On page 18, line 5, strike "(i)" and insert "(h)".
- 5 On page 18, line 11, strike "(d) or" and insert "(c)
6 and the".
- 7 On page 18, beginning on line 12, strike "(e) and
8 (f)" and insert "(d) and (e)".
- 9 On page 18, line 21, strike "(g)" and insert "(f)".
- 10 On page 19, line 1, strike "(e)" and insert "(d)".
- 11 On page 19, line 8, strike "(f)" and insert "(e)".
- 12 On page 19, line 13, strike "(g)" and insert "(f)".
- 13 On page 19, line 16, strike "(e) and (f)" and insert
14 "(d) and (e)".

1 On page 19, line 25, strike “(g)” and insert “(f)”.

2 On page 20, line 2, strike “(e) and (f)” and insert
3 “(d) and (e)”.

4 On page 21, strike line 11 through line 13, and insert
5 the following:

6 “(ii) or, if the Government appeals an
7 order under this section, until the Court of
8 Review enters an order under subsection
9 (C).

10 “(C) IMPLEMENTATION PENDING AP-
11 PEAL.—No later than 30 days after an appeal
12 to it of an order under paragraph (5)(B) direct-
13 ing the correction of a deficiency, the Court of
14 Review shall determine, and enter a cor-
15 responding order, whether all or any part of the
16 correction order, as issued or modified, shall be
17 implemented during the pendency of the ap-
18 peal.”.

19 On page 21, line 14, strike “(C)” and insert “(D)”.

20 On page 21, line 22, strike “(j)” and insert “(i)”.

- 1 On page 21, line 25, strike “(k)” and insert “(j)”.
- 2 On page 22, line 20, strike “(l) OVERSIGHT.—” and
3 insert “(k) ASSESSMENTS AND REVIEWS.—”
- 4 On page 23, line 11, strike “(a)—” and insert “(a)
5 with respect to their department, agency, or element—”.
- 6 On page 23, line 13, strike “of their agency or ele-
7 ment”.
- 8 On page 23, line 15, strike “(e) and (f)” and insert
9 “(d) and (e)”.
- 10 On page 24, line 5, strike “persons located in the
11 United States” and insert “such targets located in the
12 United States”.
- 13 On page 25, line 8, strike “and”.
- 14 On page 25, beginning on line 11, strike “persons
15 located in the United States whose communications were
16 reviewed” and insert “such targets located in the United
17 States whose communications were reviewed; and

1 the limitation of section 701) or the acquisition of
2 stored electronic communications that requires an
3 order under this Act, and such acquisition is con-
4 ducted within the United States.

5 “(2) LIMITATION.—In the event that a United
6 States person targeted under this subsection is rea-
7 sonably believed to be located in the United States
8 during the pendency of an order issued pursuant to
9 subsection (c), such acquisition shall cease until au-
10 thority, other than under this section, is obtained
11 pursuant to this Act or the targeted United States
12 person is again reasonably believed to be located out-
13 side the United States during the pendency of an
14 order issued pursuant to subsection (c).

15 “(b) APPLICATION.—

16 “(1) IN GENERAL.—Each application for an
17 order under this section shall be made by a Federal
18 officer in writing upon oath or affirmation to a
19 judge having jurisdiction under subsection (a)(1).
20 Each application shall require the approval of the
21 Attorney General based upon the Attorney General’s
22 finding that it satisfies the criteria and requirements
23 of such application, as set forth in this section, and
24 shall include—

1 “(A) the identity of the Federal officer
2 making the application;

3 “(B) the identity, if known, or a descrip-
4 tion of the United States person target of the
5 acquisition;

6 “(C) a statement of the facts and cir-
7 cumstances relied upon to justify the appli-
8 cant’s belief that the target of acquisition is—

9 “(i) a United States person reason-
10 ably believed to be located outside the
11 United States; and

12 “(ii) a foreign power, an agent of a
13 foreign power, or an officer or employee of
14 a foreign power;

15 “(D) a statement of the proposed mini-
16 mization procedures consistent with the require-
17 ments of section 101(h) or section 301(4);

18 “(E) a description of the nature of the in-
19 formation sought and the type of communica-
20 tions to be acquired;

21 “(F) a certification made by the Attorney
22 General or an official specified in section
23 104(a)(6) that—

1 “(i) the certifying official deems the
2 information sought to be foreign intel-
3 ligence information;

4 “(ii) a significant purpose of the ac-
5 quisition is to obtain foreign intelligence
6 information;

7 “(iii) such information cannot reason-
8 ably be obtained by normal investigative
9 techniques;

10 “(iv) designates the type of foreign in-
11 telligence information being sought accord-
12 ing to the categories described in section
13 101(e); and

14 “(v) includes a statement of the basis
15 for the certification that—

16 “(I) the information sought is
17 the type of foreign intelligence infor-
18 mation designated; and

19 “(II) such information cannot
20 reasonably be obtained by normal in-
21 vestigative techniques.

22 “(G) a summary statement of the means
23 by which the acquisition will be conducted and
24 whether physical entry is required to effect the
25 acquisition;

1 “(H) the identity of any electronic commu-
2 nication service provider necessary to effect the
3 acquisition, provided, however, that the applica-
4 tion is not required to identify the specific fa-
5 cilities, places, premises, or property at which
6 the acquisition authorized under this section
7 will be directed or conducted;

8 “(I) a summary statement of the facts con-
9 cerning any previous applications that have
10 been made to any judge of the Foreign Intel-
11 ligence Surveillance Court involving the United
12 States person specified in the application and
13 the action taken on each previous application;
14 and

15 “(J) a statement of the period of time for
16 which the acquisition is required to be main-
17 tained, provided that such period of time shall
18 not exceed 90 days per application.

19 “(2) OTHER REQUIREMENTS OF THE ATTOR-
20 NEY GENERAL.—The Attorney General may require
21 any other affidavit or certification from any other
22 officer in connection with the application.

23 “(3) OTHER REQUIREMENTS OF THE JUDGE.—
24 The judge may require the applicant to furnish such

1 other information as may be necessary to make the
2 findings required by subsection (e)(1).

3 “(c) ORDER.—

4 “(1) FINDINGS.—Upon an application made
5 pursuant to subsection (b), the Foreign Intelligence
6 Surveillance Court shall enter an ex parte order as
7 requested or as modified approving the acquisition if
8 the Court finds that—

9 “(A) the application has been made by a
10 Federal officer and approved by the Attorney
11 General;

12 “(B) on the basis of the facts submitted by
13 the applicant, there is probable cause to believe
14 that the specified target of the acquisition is—

15 “(i) a United States person reason-
16 ably believed to be located outside the
17 United States; and

18 “(ii) a foreign power, an agent of a
19 foreign power, or an officer or employee of
20 a foreign power;

21 “(C) the proposed minimization procedures
22 meet the definition of minimization procedures
23 under section 101(h) or section 301(4); and

24 “(D) the application which has been filed
25 contains all statements and certifications re-

1 quired by subsection (b) and the certification or
2 certifications are not clearly erroneous on the
3 basis of the statement made under subsection
4 (b) (1)(F) and any other information furnished
5 under subsection (b)(3).

6 “(2) PROBABLE CAUSE.—In determining
7 whether or not probable cause exists for purposes of
8 an order under paragraph (1), a judge having juris-
9 diction under subsection (a)(1) may consider past
10 activities of the target, as well as facts and cir-
11 cumstances relating to current or future activities of
12 the target. However, no United States person may
13 be considered a foreign power, agent of a foreign
14 power, or officer or employee of a foreign power
15 solely upon the basis of activities protected by the
16 first amendment to the Constitution of the United
17 States.

18 “(3) REVIEW.—

19 “(A) LIMITATION ON REVIEW.—Review by
20 a judge having jurisdiction under subsection
21 (a)(1) shall be limited to that required to make
22 the findings described in paragraph (1).

23 “(B) REVIEW OF PROBABLE CAUSE.—If
24 the judge determines that the facts submitted
25 under subsection (b) are insufficient to estab-

1 lish probable cause to issue an order under
2 paragraph (1)(A), the judge shall enter an
3 order so stating and provide a written state-
4 ment for the record of the reasons for such de-
5 termination. The Government may appeal an
6 order under this clause pursuant to subsection
7 (f).

8 “(C) REVIEW OF MINIMIZATION PROCE-
9 DURES.—If the judge determines that the pro-
10 posed minimization procedures required under
11 paragraph (1)(B) do not meet the definition of
12 minimization procedures under section 101(h)
13 or section 301(4), the judge shall enter an
14 order so stating and provide a written state-
15 ment for the record of the reasons for such de-
16 termination. The Government may appeal an
17 order under this clause pursuant to subsection
18 (f).

19 “(D) REVIEW OF CERTIFICATION.—If the
20 judge determines that an application required
21 by subsection (2) does not contain all of the re-
22 quired elements, or that the certification or cer-
23 tifications are clearly erroneous on the basis of
24 the statement made under subsection
25 (b)(1)(F)(v) and any other information fur-